IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE P.N.RAVINDRAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

S.T.Rev.No.389 of 2004

T.A.NO.68 OF 2000 OF THE KERALA SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH, KOZHIKODE (ORDER DATED 12.06.2001)
(ASSESSMENT YEAR 1993-94)

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REVISION PETITIONER/RESPONDENT/REVENUE:-

STATE OF KERALA,
REPRESENTED BY THE DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES,
ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMED RAFIQ.

RESPONDENT/APPELLANT/ASSESSEE:-

M/S. J.J.AGENCIES,
PROMOTERS OF KYNADI MOTELS,
ARAYADATHUPALAM,
MAVOOR ROAD,
KOZHIKODE.

BY ADVS. SRI.TOM K.THOMAS
SRI.K.SRIKUMAR
SRI.C.N.SREEKUMAR
SRI.K.MANOJ CHANDRAN &
SRI.P.R.AJITHKUMAR

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

H.L.Dattu,C.J. & P.N.Ravindran,J.

S.T.Rev.No.389 of 2004

Dated, this the 13th day of December, 2007

ORDER

H.L.Dattu,C.J.

State, being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in T.A.No.68 of 2000 dated 12th June, 2001, is before us in this Sales Tax Revision.

(2) The Revenue has framed the following question of law for our consideration and decision. It is as under:

> "Whether on the facts and in the circumstances of the case, the Tribunal is justified in cancelling the order of the Deputy Commissioner passed under Section 35 of the K.G.S.T.Act 1963".

(3) The facts in nutshell are, the assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 (hereinafter, for the sake of brevity, referred to as "the Act"). He is doing business in Indian Made Foreign Liquor.

(4) For the assessment year 1993-94, the assessee had filed his annual returns conceding a particular turnover. The said turnover had not been accepted by the assessing authority and has proceeded to complete the assessment by way of best judgment assessment order dated 8.12.1995 and had determined the total and taxable turnover of Rs.37,54,389/- and Rs.32,83,360/- respectively. While doing so, the assessing authority had made an addition of 10% on the turnover of Indian Made Foreign Liquor and had treated the addition so made as subsequent sales and, therefore, had

levied only the turnover tax.

(5) The Deputy Commissioner, who is the revisional authority, has initiated suo motu revisional proceedings in exercise of his powers under Section 35 of the Act, on the ground that the order passed by the assessing authority is illegal, irregular and prejudicial to the interest of the Revenue and, therefore, had issued a show cause notice to the petitioner, directing him to show cause, why the orders passed by the assessing authority should not be revised.

(6) After receipt of the said show cause notice, the assessee has filed his objections, bringing to the notice of the revisional authority that he is a dealer registered only under the provisions of the KGST Act and he does not have registration as dealer under the provisions of the Central Sales Tax Act. The assessee has also brought to the notice of the assessing authority that, all his purchases are made only from Kerala Beverages Corporation and lastly that the suppression detected by the Intelligence Wing of the Department at the time of the shop inspection was negligible and trivial and, therefore, there is no reason for the revisional authority to initiate suo motu proceedings to revise the best judgment assessment order passed by the assessing authority.

(7) The revising authority, after considering the reply so filed by the assessee, has proceeded to revise the best judgment assessment order passed by the assessing authority by its order dated 4.12.1999 and has directed the assessing authority to bring to tax the 10% additions made not only for the purpose of turnover tax, but also for the purpose of tax under Section 5(1) of the Act.

(8) The assessee, being aggrieved by the aforesaid order

passed by the revisional authority, has filed an appeal before the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kottayam in T.A.No.68 of 2000. The Tribunal by its order dated 12th June, 2001 has allowed the assessee's appeal and, thereby, has set aside the orders passed by the revisional authority. The findings and conclusions reached by the Tribunal is at paragraph 4, which reads as under:

> "*Undisputedly the appellant is not effecting any purchase of liquor from outside the State. Further the appellant has no CST R.C. The stock difference found on inspection in respect of liquor were negligible and trivial when compared to the volume of sales effected. So the assessing authority rightly added 10% of the IInd sales turnover and assessed them at the hands of the appellant as IInd sale. So the Deputy Commissioner was not justified in cancelling the assessment under Section 34 of the KGST Act. So we cancell the impugned order of the Dy. Commissioner, Commercial Taxes, Kozhikode bearing No.KE1-9560/98 dated 4.12.1999*".

(9) Aggrieved by the aforesaid findings and conclusions reached by the Sales Tax Appellate Tribunal, the Revenue is before us in this Sales Tax Revision.

(10) Sri.Muhamed Rafiq, learned Senior Government Pleader appearing for the Revenue, would contend that the Tribunal was not justified in reversing the findings of the revisional authority and, therefore, requests us to interfere with the said order and to restore the orders passed by the revisional authority.

(11) The learned counsel appearing for the assessee ably justifies the impugned order passed by the Tribunal.

(12) The undisputed facts are, the assessee is a dealer registered under the provisions of the Act and he is engaged in the business of dealing in Indian Made Foreign Liquor. He is not a dealer registered under the provisions of the Central Sales Tax Act. His purchases are only from Kerala Beverages Corporation.

(13) The shop inspection had been conducted by the Intelligence Wing of the Department and after verification of the books of accounts and the stock found at the time of inspection, the assessing authority had thought it fit that only 10% addition requires to be made to the declared turnover of the dealer. Since the entire purchases of the assessee was only from the Kerala Beverages Corporation, the assessing authority has thought it fit to treat the so-called excess stock only for the purpose of second sales and, accordingly, has levied the turnover tax.

(14) The revisional authority takes exception to the orders so passed by the assessing authority. Having made an addition of 10% to the declared turnover of the dealer by the assessing authority, the revisional authority is of the view that the assessing authority ought to have considered the addition made even for the purpose of levying tax under Section 5(1) of the Act. This, in our opinion, is improper, since the assessee is a dealer registered only under the Act and all his purchases are only from the Kerala Beverages Corporation and as such there is no question of evasion of payment of sales tax. In the absence of evidence towards unaccounted taxable purchases, assessee cannot be assessed on the turnover added over and above the conceded turnover towards sales of Indian made Foreign Liquor. Apart from this, the power of revision suo motu under Section 35 of the Act is in the nature of supervisory jurisdiction and, therefore, firstly it must be sparingly used and

secondly it can be exercised only when the order to be revised is erroneous and that by virtue of the order being erroneous prejudice has been caused to the interest of the revenue. He is not empowered to substitute his own judgment for that of the subordinate officer, unless the decision of the subordinate officer is held to be erroneous or perverse or contrary to law. Therefore, the assessing authority was justified in passing best judgment assessment order only adding 10% to the conceded turnover of the assessee for the purpose of turnover tax.

(15) This aspect of the matter has, rightly, been accepted by the Tribunal and the Tribunal, in our opinion, is justified in coming to the conclusion that the revisional authority was wholly unjustified in cancelling the best judgment assessment order passed by the assessing authority by invoking his revisional powers under Section 35 of the Act. We do not find any error in the orders passed by the Tribunal. Therefore, interference with the orders passed by the Tribunal is not called for. Accordingly, the question of law framed by the Revenue is answered against the Revenue and in favour of the assessee.

Ordered accordingly.

H.L.Dattu
Chief Justice

P.N.Ravindran
Judge

vku/DK.